No. 80-332

In the Supreme Court of the United States

OCTOBER TERM, 1980

JAMES A. RHODES, ET AL., PETITIONERS

v.

KELLY CHAPMAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-332

JAMES A. RHODES, ET AL., PETITIONERS

v.

KELLY CHAPMAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This case involves the constitutionality of housing two prisoners in cells designed for one at an Ohio state maximum security prison, under the totality of the circumstances present at that prison.

While the United States takes no position in the case before the Court, we believe it will be useful to the Court to have some indication of current federal policy in this area and of the practices at the Bureau of Prisons, which administers the 43 federal institutions comprising one of the largest correctional systems in the country.

We are accordingly lodging with the Clerk of this Court 10 copies of the new Federal Standards for Prisons and Jails, issued by the Attorney General on

December 16, 1980. These standards, which are intended to be useful both for planning new facilities and for assessing existing ones, specify (Section 2.05) that "[i]n long term institutions, there is [to be] one inmate per cell or room", which is to have "at least 60 square feet of floor space" (Section 2.04). In addition, Section 2.02 directs that "[a]ll cells and detention rooms rated for single occupancy [are to] house only one inmate". The preamble emphasizes that, while the standards are intended to "promote practices that protect the basic constitutional rights of inmates", they "should not be taken to be a statement of constitutional minima. They confer no rights and create no legal causes of action." They do, however, express the firm federal policy that there should be no double celling in long-term correctional facilities.

The district court in this case identified five factors (Pet. App. A34–A37) upon which it based its conclusion that double celling at the state facility involved is unconstitutional: (1) the extent of overcrowding at the facility (percentage over design capacity);[1] (2) the size of the cells in which inmates are double-celled;[2] (3) the hours double-celled inmates are required to spend in their cells;[3] (4) the length of double-celled inmates'

---

[1]The state facility exceeded its design capacity of 1600 by 38% at the time of trial (*id.* at A35).

[2]The cells at the state facility measure approximately 63 square feet (*id.* at A35–A36).

[3]Double-celled inmates at the state facility spend most of their time in their cells with their cellmates (*id.* at A37). Of the inmates double-celled at the state facility, 25% (320 cells) are confined to their cells for all except 2–6 hours weekly (*id.* at A18). As to the remaining 75% of the double-celled inmates (960 cells), the court at one point (*id.* at A16) states that they are locked in their cells from 9:00 p.m. to 6:30 a.m. (9½ hours), but later finds (*id.* at A17) that they are out of their cells only 10 hours a day, leaving 14 hours daily of confinement in their cells.

prison terms;[4] and (5) the degree of permanence of double-celling at the facility.[5] The attached charts, prepared by the Bureau of Prisons, provide information concerning each of these factors for the federal prison system, as well as other information the Court may find useful.

Charts I and II are relevant to the factor of the degree of permanence of the problem. Chart I shows the wide variations over time in the size of the federal prison population. The Bureau of Prisons points out that these variations arise from three factors: the level of arrests, prosecution policies,[6] and sentencing and parole decisions. The size of the prison population is accordingly difficult to predict in a time frame necessary to construct new facilities, which averages five years for a high-security facility.[7] The time and the costs required for new construction are shown in detail by Chart II.

Chart III relates to the factor of design capacity. It summarizes the extent to which federal correctional

---

[4]The inmates at the state facility are "long term" prisoners (*id.* at A34). Of the 2300 inmates at the state facility at the time of trial, 67% were serving either life or first degree felony sentences (*id.* at A12). The minimum term upon conviction of a first degree felony in Ohio is 4 years, and the maximum term is 25 years. Ohio Rev. Code Ann. § 2929.11(B)(1) (Page 1975).

[5]The trend toward increased double celling at the state facility had continued for the last 4 years prior to trial (Pet. App. at A37).

[6]Particularly relevant are policies concerning the division of prosecutorial responsibility for offenses that violate both state and federal law. For example, a policy of leaving the bulk of bank robbery prosecutions to the states is reflected in the sharp drop in the federal prison population between 1977 and 1979.

[7]The new Federal Standards, *supra*, at 16, recommend that "the development and use of alternatives to incarceration be explored before new construction is pursued".

facilities exceeded their design capacities in 1975, 1979, and 1980. Finally, Chart IV summarizes the remaining three factors, indicating the extent to which federal prisoners are double-celled in cells measuring less than 63 square feet, the daily hours such prisoners must spend in their cells, and the range of their sentences. The chart shows that in December 1980, 1,292 federal prisoners—approximately 5% of the federal prison population—were double-celled in cells less than 63 square feet, the size of the cells involved in the instant case.[8] Of these 1,292 prisoners, 1,106 inmates (85.6%) were in regular housing, where they were required to spend 5 to 9½ hours a day in their cells. Those inmates were serving sentences ranging from 90 days to life. The additional 186 federal prisoners confined in double cells of less than 63 square feet were in special housing,[9] and thus confined for about 23 hours a day. Throughout the federal correctional system, 478 prisoners were confined in special housing in double cells larger than 63 square feet.[10] We did not ask the

---

[8]In addition, 170 prisoners were housed in two-person cubicles of less than 63 square feet. A cubicle is a partially enclosed space defined within a dormitory by constructing removable walls approximately four and a half to six feet in height. Such cubicles are accordingly significantly less confining than the cells involved in this case.

Other federal prisoners are double-celled in cells larger than 63 square feet. In addition, the United States Penitentiary at Atlanta, Georgia, has 29 cells that are 160 square feet in size and house 8 inmates. Some institutions have cells readily available for double occupancy should a rapid increase in commitments create the need. At the Federal Correctional Institution at Lompoc, California, for example, there are 25 cells, all smaller than 63 square feet in size, equipped to confine two inmates.

[9]"Special housing" is defined in footnote 2 of Chart IV.

[10]Two hundred and thirty two of these 478 were confined in the 160 square feet, 8 person cells in Atlanta.

Bureau of Prisons to undertake the rather extensive inquiries necessary either to identify the lengths of the sentences of those confined in special housing, or to estimate how long any double-celled prisoners are likely to be so confined.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

JANUARY 1981

CHART I

NUMBER OF INMATES IN FEDERAL INSTITUTIONS
IN DECEMBER 1970 - 1980

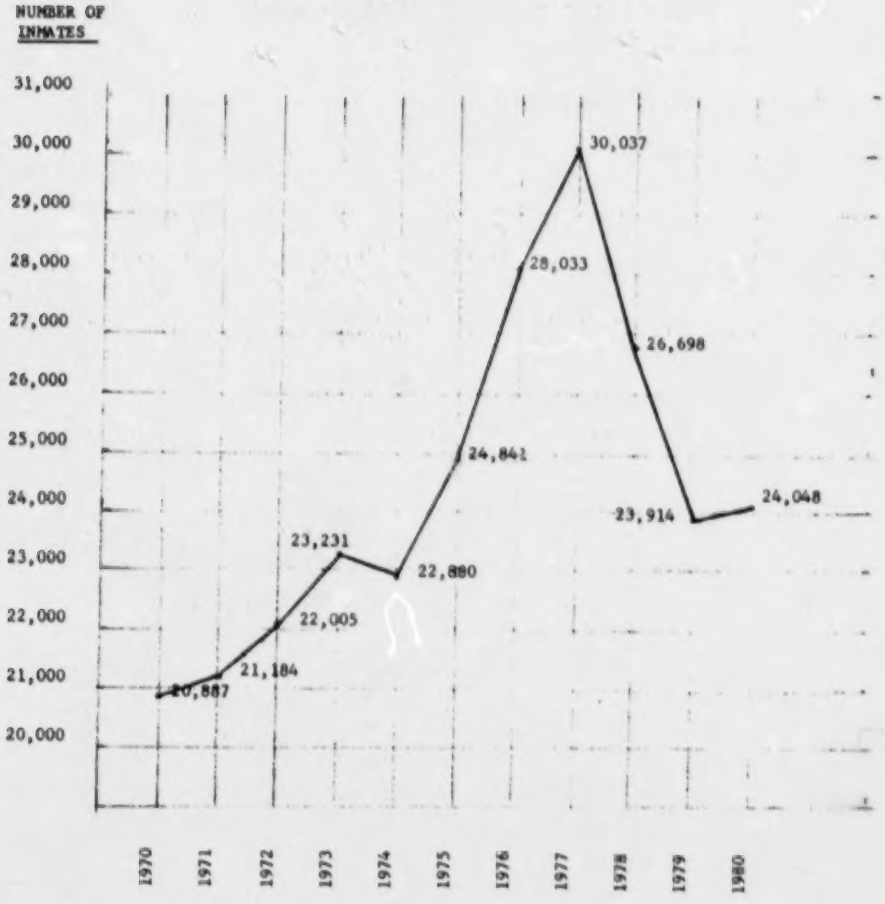

Chart II

BUREAU OF PRISONS
OFFICE OF FACILITIES DEVELOPMENT
NEW CONSTRUCTION

New Federal Institutions 1971 - Present	FY Site and Planning Done	Original Physical Capacity (By Architect Design)	Original Number of Beds	Construction Budget FY 66 - FY 80 (in thousands)	Cost Per Bed	Square Footage	Cost Per Square Foot	Const. Start	Const. Comp.
New York MCC	66-71	418	449	$14,830	$33,025	217,400	$68	12-71	3-75
Butner FCI	71-72/75	321	348	19,250	55,325	223,600	86	6-72	1-76
Pleasanton FCI	71-72	220	247	6,623	26,825	121,550	55	8-72	7-74
Chicago MCC	71-72	373	386	10,220	26,475	187,592	54	8-72	6-75
San Diego MCC	72-73	462	503	14,459	28,750	287,000	50	2-73	11-74
Miami FCI	73-74	224	244	8,700	35,650	132,728	65	2-74	1-76
Memphis FCI	73-75	419	454	11,040	24,325	185,007	60	4-75	3-77
Talladega FCI	73-77	493	538	13,480	25,050	255,470	53e	3-77	9-79
Bastrop FCI	73-75	460	501	12,851	26,650e	200,550e	60e	9-76	8-79
Otisville FCI w/camp	75-77	543e	595e	23,200	39,000e	288,955e	80e	10-76	5-80e*
Lake Placid FCI	77-77	493	538	22,000	40,900e	281,310e	78e	5-77	8-80e
North Central FCI	73	500e	550e	1,000					
Northeast FCI	73	500e	550e	1,000					
Tucson FDC	77-77	200e	204e	2,700	13,250e	40,950e	66e	9-79e	11-81e
Phoenix FCI/FDC	79-79	300	300e	15,950e	29,000e	300,000e	53e	10-80	1-83e

GRAND TOTALS: Excluding MCC's (Jails) $137,794
Including MCC's $177,303

e = estimated
* Otisville was dedicated on October 4, 1980

ADDED FACILITIES AT EXISTING SITES

	Capacity	Construction Funds	Opening Date
Boron Camp	250	500,000	4/79
Big Spring Camp	500	300,000	6/79
Danbury Camp	98	1,000,000	6/81
El Reno Camp	123	1,200,000	11/80
Leavenworth Camp Addn.	71	200,000	4/80
Texarkana Camp	122	855,000	11/80
La Tuna Housing Unit	60	900,000	12/80
Sandstone Housing Unit	95	1,110,000	8/81

CHART III

DECEMBER 1980 POPULATION OF FEDERAL CORRECTIONAL FACILITIES
WHICH ARE OVER PHYSICAL (DESIGN) CAPACITY

Institution	Current Population	Capacity	Percent Over (+), Under (-) Capacity 1980	1979	1975
FPC Allenwood, PA	385	374	+ 2.94	+ 16.04	+ 4.4
FCI Ashland, KY	531	478	+ 11.09	+ 21.07	+ 35.3
USP Atlanta, GA	1668	1505	+ 10.83	- 10.96	+ 6.9
FCI Butner, NC	341	321	+ 6.23	+ 1.56	--
CTC Dallas, TX	35	30	+ 16.07	+ 16.67	- 40.0
FCI Danbury, CT	625	511	+ 22.31	+ 21.07	+ 10.3
CTC Detroit, MI	67	54	+ 24.07	- 57.63	- 1.9
FCI Englewood, CO	461	346	+ 32.47	+ 28.17	+ 16.6
FCI Fort Worth, TX (male)*	285	278	+ 2.52	+ 10.87	- 14.5
FCI La Tuna, TX	468	363	+ 28.93	--	--
USP Lewisburg, PA (camp)	170	147	+ 15.65	+ 6.22	--
FPC McNeil Island, WA	242	200	+ 21.00	--	- 5.2
USP Marion, IL (camp)	116	98	+ 18.37	- 13.27	- 13.7
FCI Memphis, TN	479	410	+ 16.83	+ 2.95	--
FCI Miami, FL	218	214	+ 1.87	+ 65.43	--
FCI Milan, MI	523	429	+ 21.91	+ 34.43	- 5.0
FPC Montgomery, AL	226	220	+ 2.73	+ 13.12	+ 5.2
FCI Morgantown, WV	360	321	+ 12.15	+ 15.11	+ 28.4
FCI Oxford, WI	569	498	+ 14.26	+ 13.43	- 4.6
FCI Petersburg, VA	753	492	+ 53.05	+ 50.55	+ 33.1
FCI Petersburg, VA(camp)	103	37	+178.38	+ 159.46	--
FCI Sandstone, MN	374	325	+ 15.08	+ 7.62	- 6.4
FCI Seagoville, TX(camp)	302	279	+ 8.24	- 8.61	+ 9.8
FCI Talladega, AL	597	436	+ 36.93	- 88.53	--
FCI Tallahassee, FL	578	492	+ 17.48	+ 27.13	+ 28.3
USP Terre Haute, IN	848	778	+ 9.00	- 1.36	+ 31.2
USP Terre Haute, IN(camp)	230	216	+ 6.48	+ 9.05	- 7.6
FCI Terminal Island, CA	838	685	+ 22.34	+ 49.92	+ 30.2
FCI Texarkana, TX	531	429	+ 23.78	+ 27.71	+ 31.6

*FCI Fort Worth is a "co-correctional" institution, housing both male and female inmates. The female section is under-capacity.

In mid-December 1980, the entire Federal system was almost at its Physical Capacity: 24,048 inmates, with a capacity of 24,169.

CHART IV—DOUBLE-CELLING IN FEDERAL INSTITUTIONS—DECEMBER 1980

REGULAR HOUSING

INSTITUTION[1]	Total Population	Number of cells Under 63 Sq. Ft. Double-Celled	Number of Cubicles Under 63 Sq. Ft.	Hours Per Day Spent in Cells or Cubicles	Range of Sentences for Those Who Are Double-Celled
FCI, Ashland, Ky.	531	22	42	9:30 p.m.–7:00 a.m.	2 years to Life (cells)
FCI, El Reno, Okla.	820	22		9:15 p.m.–6:00 a.m.	4 years to Life
USP, Lewisburg, Pa.	984	137		11:30 p.m.–6:30 a.m.	3 years to Life
FPC, Montgomery, Ala.	226		4	10:00 p.m.–6:00 a.m.	6 months to 4 years
FCI, Milan, Mich.	523	38		9:00 p.m.–6:00 a.m.	90 days to Life
FCI, Oxford, Wis.	569	178		11:00 p.m.–6:00 a.m.	18 months to Life
FCI, Sandstone, Minn.	374		39	10:00 p.m.–6:00 a.m.	6 months to 15 years
FCI, Terminal Is., Ca.	838	71		10:00 p.m.–6:00 a.m.	6 months to 20 years
USP, Terre Haute, Ind.	848	85		1:00 a.m.–6:00 a.m.	1 year to Life

[1]FCI—Federal Correctional Institution; FPC—Federal Prison Camp; USP—U.S. penitentiary

SPECIAL HOUSING[2]

INSTITUTION	No. of Cells Under 63 Sq. Ft. Double-Celled	No. of Cells Over 63 Sq. Ft. Double-Celled
USP, Atlanta, Ga.		26 (66½ Sq. Ft.); 29 (8 inmates, 160 Sq. Ft.)
FCI, El Reno, Okla.	7 (40 Sq. Ft.)	
FCI, La Tuna, Tx.	8 (54 Sq. Ft.)	
USP, Leavenworth, Ka.		22 (176 Sq. Ft.)
USP, Lewisburg, Pa.		51 (72 Sq. Ft.)
FCI, Lexington, Ky.		2 (112, 125 Sq. Ft.)
FCI, Lompoc, Calif.	17 (50 Sq. Ft.)	
FCI, Memphis, Tn.		10 (84, 96 Sq. Ft.)
FCI, Miami, Fla.		1 (89 Sq. Ft.)
FCI, Oxford, Wis.		10 (71 Sq. Ft.)
FCI, Petersburg, Va.	9 (46 Sq. Ft.)	
Medical Center, Springfield, Mo.		1 (84 Sq. Ft.)
FCI, Terminal Island, Ca.	45 (48 Sq. Ft.)	
USP, Terre Haute, Ind.	5 (58½ Sq. Ft.)	
FCI, Texarkana, Tx.	2 (48 Sq. Ft.)	

[2] In the Bureau of Prisons, inmates are locked in their Special Housing cells about 23 hours a day. Special Housing is the confinement of those who cannot go to regular population: those requiring special protection from others, those under investigation for crimes, those awaiting trial, those being disciplined, and those awaiting transfer to more appropriate institutions.

☆U.S. GOVERNMENT PRINTING OFFICE: 1981 335854 237